

RULEMAKING NOTICE FORM

Notice Number 2016-242	Rule Number He-W 654.04(d)
1. Agency Name & Address: Dept. of Health and Human Services Division of Family Assistance 129 Pleasant St, Brown Bldg. Concord, NH 03301	2. RSA Authority: <u>RSA 167:80, IV(h)</u> 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment <u>X</u> Repeal _____ Readoption _____ Readoption w/amendment _____
5. Short Title: Excluding Dependent Children's Supplemental Security Income (SSI) When Determining Eligibility and Benefit Amount for Financial Assistance to Needy Families (FANF)	

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (Department) is proposing to amend He-W 654.04 by readopting paragraph (d) which excludes dependent children's Supplemental Security Income (SSI) in the Financial Assistance to Needy Families (FANF) cash eligibility and benefit determination process. He-W 654.04(d) is currently an emergency rule, which is scheduled to expire 2/28/17. The paragraph is unchanged from the emergency rule.

The Department's proposal continues the rule in response to the August 2, 2016 decision of the Supreme Court of New Hampshire in Carrie Hendrick et. al. v. New Hampshire Department of Health and Human Services, which reversed the Department's rule at He-W 654.04(c) insofar that the Department's rule included children's SSI income in the eligibility and benefit determination process for FANF cash assistance. The Department is proposing to continue that amendment of He-W 654.04 by readopting paragraph (d) to conform with the ruling and exclude children's SSI income in the eligibility and benefit determination process for FANF cash assistance.

Excluding dependent children's SSI income in the determination for FANF cash assistance, results in less income being considered available to the household. Less income being considered means that more NH citizens with a dependent child receiving SSI will be eligible for FANF cash assistance and that NH citizens with a dependent child receiving SSI who are eligible for FANF will receive a larger benefit allotment.

The fiscal impact statement (FIS) may be unclear. The FIS addresses the fiscal effect of paragraph (d) as if it were a new change because an FIS was not required for the emergency rule.

6. (b) Brief description of the groups affected:

Applicants and recipients of FANF cash assistance who have a dependent child receiving SSI.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>Rule</u>	<u>Federal Reg./RSA</u>
He-W 654.04(d)	RSA 167:3-c, I; RSA 167:4, I(a); RSA 167:79, II; RSA 167:80, IV(h)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**
Address: **Dept. of Health & Human Services** Phone #: **271-9374**
Administrative Rules Unit Fax#: **271-5590**
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Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, January 26, 2017**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, January 19, 2017 10:30 am**

Place: [**DHHS, Brown Bldg., Room 232 , 129 Pleasant St., Concord, NH 03301**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **16:255** , dated **12/23/16**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rule, the proposed rule may increase state costs and increase benefits to individuals by an indeterminable amount, to the extent that those individuals have dependent children receiving Social Security Income (SSI) and are affected by the rule.

2. Cite the Federal mandate. Identify the impact of state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The Department's proposal, which is a continuation of an emergency rule filed 9/1/2016, amends the rule in response to the August 2, 2016 decision of the New Hampshire Supreme Court in Carrie Hendrick & a.v. New Hampshire Department of Health and Human Services, which reversed the Department's rule insofar as the rule included children's SSI income in the eligibility and benefit determination process for Financial Assistance to Needy Families (FANF) cash assistance. In keeping with the emergency rule, the proposed rule will amend He-W 654.04 by inserting paragraph (d) to conform with the ruling and exclude children's SSI income in the eligibility and benefit determination process for FANF cash assistance. The effect of this change will be that less income is considered available to each household; less income being considered available means that more NH citizens with a dependent child will be eligible for FANF cash assistance, and that those already eligible will receive a larger benefit allotment. The Department projects the immediate annual cost of the proposed rule is \$78,237, based on 17 open FANF cases involving dependent children receiving SSI benefits. In addition, during the six-month period prior to implementation of the emergency rule, 109 FANF applications were denied as a result of being over the threshold. Should all 109 families reapply and be eligible for benefits, the average increase in FANF expenditures would be approximately \$667,000 annually. The Department states the costs for FY 2017 will be absorbed within the Department's budget. Future costs may be paid out of the TANF reserve, and will result in no additional general fund expense.

A. To State general or State special funds:

See response to 3 above.

B. To State citizens and political subdivisions:

See response to 3 above. No impact on political subdivisions.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rule continues to modify an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Amend He-W 654.04, effective 6-12-13 (Document #10358), as amended effective 9-1-16 (Document #11174, Emergency), by readopting paragraph (d), so that He-W 654.04(d) is cited and reads as follows:

He-W 654.04 Treatment of Specific Types of Income.

(d) With respect to (c) above, supplemental security income (SSI) shall be excluded for the FANF categories of financial assistance when the recipient of the SSI benefit is a dependent child, as defined in He-W 601.03(e).

APPENDIX

<u>Rule</u>	<u>Federal Reg./RSA</u>
He-W 654.04(d)	RSA 167:3-c, I; RSA 167:4, I(a); RSA 167:79, II; RSA 167:80, IV(h)